

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>11-O-17269-LMA</b>
	)	
<b>FADLO MOUSALAM,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 38640,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

Respondent Fadlo Mousalam (respondent) was charged with failing to comply with all conditions attached to a disciplinary probation. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 21, 1966, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On October 25, 2011, the State Bar filed and properly served the NDC in this matter by certified mail, return receipt requested, and by regular mail at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt for certified mail was returned by the U.S. Postal Service signed with an illegible full name that was not that of respondent.

The State Bar deputy trial counsel assigned to this matter: (1) attempted to reach respondent by sending him an email at the email address listed on his membership records;<sup>3</sup> (2) contacted the probation deputy assigned to respondent to ascertain whether respondent's profile contained any other address for respondent; (3) attempted to reach respondent by telephone at his membership records telephone number; (4) called directory assistance for the area which includes respondent's official membership records address; and (5) checked the Daily Journal California Directory of Attorneys for other addresses for respondent.

Respondent failed to file a response to the NDC. On November 22, 2011, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to

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<sup>3</sup> Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on December 8, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On July 13, 2012, the State Bar filed and properly served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that (1) it has had no contact with respondent since the default was entered; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on August 8, 2012.

Respondent has a record of two prior impositions of discipline.<sup>4</sup> Pursuant to a Supreme Court order filed on September 15, 2000, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years on conditions including a 45-day suspension. The misconduct involved practicing law and holding himself out as entitled to practice law while he was enrolled as an inactive member of the State Bar of California and, as

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<sup>4</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

such, he willfully failed to support the laws of the State of California. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on September 15, 2010, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for one year subject to probation conditions including that he be suspended from practicing law for the first 60-days of probation. Respondent was disciplined for failing to (1) perform legal services with competence; (2) promptly release all client papers; (3) promptly respond to reasonable client status inquiries; (4) promptly provide a client with an accounting; (5) promptly comply with reasonable requests for copies of significant documents; (6) promptly refund unearned fees; and (7) render appropriate accounts to his client. Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

#### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **Case Number 11-O-17269 (Probation Matter)**

Count One - respondent willfully violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with all conditions attached to the disciplinary probation ordered by the Supreme Court in its Order filed on September 15, 2010.

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### **Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the NDC was served on respondent at his membership records address by both certified and regular mail. The State Bar also attempted to reach respondent by email and telephone; contacted the probation deputy assigned to respondent; called directory assistance; and checked the Daily Journal California Directory of Attorneys;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Fadlo Mousalam be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Fadlo Mousalam, State Bar number 38640, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: November \_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court